

## **WORKERS' COMPENSATION INDUSTRIAL COUNCIL**

**MARCH 22, 2012**

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, March 22, 2012, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman  
Kent Hartsog, Vice-Chairman  
James Dissen  
Dan Marshall

### **1. Call to Order**

Chairman Bill Dean called the meeting to order at 1:00 p.m.

### **2. Approval of Minutes**

Chairman Bill Dean: The minutes of the February 16<sup>th</sup> meeting have been sent out. Did everybody have a chance to look at them? Is there a motion to approve the minutes as stated?

Dan Marshall made the motion to approve the minutes from the February 16, 2012, meeting. The motion was seconded by James Dissen and passed unanimously.

### **3. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge**

Judge Rebecca Roush: Good afternoon. What you have before you is the Office of Judges statistics for the month of February. I'll be brief. I know you have a busy agenda today.

One of the things I wanted to point out to you first and foremost is that we acknowledged 502 protests in the month of February. It does appear that we are below average with regard to the projected totals for calendar year 2012. We anticipate now that we'll have about 4,800 protests for the year, so the protests are down at this point.

Turning to page five, one of the things that I need to point out to you is with regard to acknowledgement timeliness. Our Rule requires us to acknowledge protests within 30 days, and you will see that we have not met that goal entirely. Due to our new programming changes that we talked about last month, that is what impacted this number. We are hopeful that we're back on track and the acknowledgement timelines can be completed within the timelines required.

I know that you are interested in the Final Decision Timeliness. We seem to be doing well with regard to getting them out within 60 days. There was a slight variance there. As you see in the column marked "Feb. '12," 0.6% was done within 60 to 90 days. That also was due to some computer glitches. We had a number of them throughout the month that caused us to be down. We may have missed a timeline here for final decisions. But I will say on a programming note, we seem to be making progress. This is a custom program that our IT Department has put together for us, so we still are working through a number of issues with data conversion and also with programming. It seems to be smoothing out, but nonetheless we are still running into a few issues which I think you'll see impacted this report.

One other thing I wanted to point out – thanks to Randy Suter who is on the ball – on page 14, this chart is inaccurate. Randy accurately pointed out that the totals do not actually add up. One of the reasons we think this happened is because of the programming changes that have taken place. We pull all of our data through our AIMS System and because of a programming error this report is inaccurate. I can get this back to you in an accurate version within the next day or two. That is my report and I would be happy to take any questions that you may have about this report or about the office in general.

Chairman Dean: Mr. Dissen, do you have any questions?

James Dissen: I do not, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, Mr. Chairman.

Judge Roush: Thank you.

**4. Workers' Compensation Voluntary Market/Self-Insured Market Comparisons – Commissioner Michael Riley**

Michael Riley, Commissioner: Good afternoon everyone. At our last meeting the Council asked our office to prepare some numbers in regard to the self-insured community and the private market in relation to the market share. You will find in here that there are a couple different slices of the presentation to help present a picture of what the two sectors bring.

In the first section you have a report of policy accounts, which we captured through NCCI's Proof of Coverage System, to the number of self-insured active employers we have. You can see we have about 34,000 policies, and as of year end 2011 there are 90 active self-insured accounts. There is a slight decrease in the active membership of self-insureds. With the private market opening some of the self-insureds have moved to other financing alternatives.

The next chart provides the estimated average employee accounts. We are averaging about 590,000 employees covered by the private market and 80,000 employees covered by the self-insured for an 88/12 split.

The last presentation is the payroll. The private market provides about \$21 billion in wages compared to \$3.5 billion payroll for self-insureds, which is an 85/15 split.

Obviously within these pools there will be a lot variance. But when you aggregate everything up I think this does provide you with a benchmark of what the two sectors bring. I would be happy to answer any questions.

Chairman Dean: Mr. Dissen, do you have any questions for Commissioner Riley?

Mr. Dissen: No, not at this time, sir. Thank you.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: Is there any consideration with regard to the Old Fund coverage considered in that? Or is that just strictly outside insurance markets, BrickStreet at all, and then versus the self-insured, and it doesn't have anything for the Old Fund?

Commissioner Riley: Yes sir. It's BrickStreet and on, yes, so no Old Fund.

Chairman Dean: Anything else, Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

## **5. Update on Workers' Compensation Safety Study – Ryan Sims**

Ryan Sims, Associate Counsel, OIC: Good afternoon Chairman Dean and members of the Industrial Council. I want to give you a brief update of where we're at with the Safety Study. We were able to get it adequately prepared through the West Virginia University Safety and Health Extension and the online service they use and sent out to the top ten carriers in West Virginia and the current active self-insured employers on March 8. The first week we had a few questions that came in. People wanted a hard copy versus the electronic copy of the study instead of having to go question by question through the survey software. We don't have any hard numbers yet on how many have responded, but we should be able to get that soon and report that to you at the next meeting. Sarah [Young] will let you know toward the end of the month and we're hoping everyone has responded. The goal is to get everyone's responses in about 30 days. That is moving along. As discussed we will certainly keep you updated between meetings. We expect to receive good data. As far as the MOU, we did pass along to you a copy of that. It is in the final stages of being executed. I know Commissioner Riley is very close to signing that. Once we get a draft report from the Safety and Health Extension we will provide that to the Industrial Council. That is the status of the Safety Study.

Chairman Dean: Mr. Dissen, do you have a question?

Mr. Dissen: Is there anything substantially changed from the draft that you sent around on the Memorandum of Understanding?

Mr. Sims: No, I don't believe there was.

Mr. Dissen: Thank you.

Chairman Dean: Mr. Hartsog?

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Mr. Hartsog: Will the schedule work out to allow us to have a draft of the report [from them] and then we have the ability to provide feedback on it before the report becomes final and gets issued?

Mr. Sims: The goal is to get you a copy of their draft and get your thoughts on it. We can e-mail it out to you. The structure of the Industrial Council meetings in May and June I think there is only one meeting during those months. There is a late April meeting but not a June meeting. We'll get you a copy of the report. If it is your desire to make public comments in an open forum on the draft. . .

Mr. Hartsog: Well, my concern, Ryan, is that the Industrial Council is going to provide a report to the Legislature. And I think that the Industrial Council should have the opportunity to review a draft and make comments on it before the report becomes final.

Mr. Sims: Certainly.

Mr. Hartsog: Okay. And I think the changes to the report. . .or us coming together in a meeting such as this would be appropriate to go over it and have them review it with us and have a chance to look at it beforehand. That's my feedback.

Mr. Sims: It should be entirely possible to get a draft from them sometime by mid to late April.

Mr. Hartsog: If the schedule works out, Ryan, where we need to have another meeting, I'm all for that.

Mr. Sims: That's possible.

Mr. Hartsog: I don't want to put something out there without us obviously having a chance to look at it or be asked to just vote on the final product.

Mr. Sims: At this time we can send you a copy of their first draft and have you look at it individually and then we can work those details out. If we have to schedule a special meeting to discuss the finalization and approval of it, we can certainly work that out.

Mr. Hartsog: Thank you very much.

Chairman Dean: Mr. Marshall, do you have any questions?

Mr. Marshall: No questions. I do concur entirely with the remarks just made. I would ask that you proceed in that direction.

Chairman Dean: Very good. Thank you, sir.

**6. Request for Final Approval of Title 85, Series 11, "Employer Default, Enforcement, Collections and Related Matters" – Ryan Sims**

Ryan Sims, Associate Counsel, OIC: Members of the Industrial Council, we are now bringing before you the final working draft of Title 85, Series 11. It was sent to you last week. This is the post comment version. There were a handful of changes made following the receipt of comments. We believe they are all non substantive changes as we would describe them. I am going to proceed through those changes. Members of the public were also provided a copy of the final rule, and the changes are highlighted in yellow. Again, this is the difference between the rule that was filed for public comment and the changes made after the closing of public comment.

On page six, 6.1.g. – That was just a citation change. The current citation was repealed and replaced with the one that is placed in there. It's now in the criminal Code, but it still addresses criminal prosecution with those in noncompliance with parts of the workers' compensation Code.

Moving to 6.2., we added some language addressing what is called "distrain" of personal property. As you recall, in the former version of the rule we struck a very long section dealing with "distrain." We're convinced it wasn't necessary and that it also could cause some problems based on some West Virginia case law. We found "distrain," which is sort of using self help to go after property rather than court remedies. This is just some cleanup language to essentially say you could still use "distrain." There could be a few instances where you could use it if you think somebody is about to take property out of state or something like that. . . "consistent with applicable West Virginia statutory and case law." It is not a remedy to my knowledge. We wanted to make it clear that if it chooses to be used then it must be consistent with statutory and case law.

Moving down to 6.4. on page six – We struck “and 6.2.” from there because that section is describing the remedies that are discussed further in the rule, and since we struck the “distrain” section we struck the reference to “6.2.”

Page seven, section 8.3. – That is a provision we added in response to comments by the Affiliated Construction Trades. They were concerned that we struck a provision saying that compromise and settlements were public record. It wasn't our intent to imply that they were no longer public record. But the law makes it very clear that it is a statutory provision. However, in a response to them – just out of an abundance of caution – we didn't want to imply that they were no longer public record so we placed a provision in here which states exactly what the law states, and it is cited there in §33-2-22(e).

On page 18, that is about as technical and stylistic as it gets. We are just adding two parentheses and the word “twenty,” because previously it just had “20.”

On page 21, section 19.1., we had one small change. Strike “sub” from subsection. That is a technical change. On page 22, the same section 19.1., we added “or portion of each month.” That was a comment that Mr. Hartsog made a while back just making sure it is clear that for every month beginning on the first day of that month that an employer defaults, they are subject to a new fine for that month. Then I added “West Virginia workers' compensation coverage.” That's a term that's defined throughout the rule, and again that's technical cleanup.

Finally in section 19.2., that was some re-wording in addition of some verbiage at the bottom. We just wanted to make sure it was clear that when an employer defaulted but then procured coverage but then defaulted again by letting their coverage lapse that they were then subject to a fine up to \$10,000.00. Again, that's always been the case.

Those are the changes we made since the comment period closed. And with that, it would be appropriate for motions to accept the changes and approve the rule.

Chairman Dean: Mr. Hartsog, do you have any questions on any of the changes?

Mr. Hartsog: No. Mr. Pauley, do you concur that these changes are non substantive per se?

Andrew Pauley (General Counsel, OIC): Yes. We believe them all to be technical. They were just some last minute changes for clarification purposes, and technically it doesn't change any of the substantive law on how we are approaching it. We also

agreed that it would be appropriate – and I discussed this with Ryan – just so the record is clear to entertain a motion on just these post comment technical changes and have an up or down vote on that; and then the whole rule as itself, have a motion on that so it is clear for the record, and also for the Council of what they are voting on.

Chairman Dean: Mr. Dissen, do you have any questions on the changes?

Mr. Dissen: I do not, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Is there a motion to approve the changes as stated?

Mr. Marshall: So made.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded to approve the changes as stated. Any question on the motion? All in favor “aye.” All opposed “nay.” The aye’s have it. [Motion passed.]

Chairman Dean: Is there a motion for final approval of Title 85, Series 11?

Mr. Marshall: So made, Mr. Chairman.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded. Are there any questions on the motion? All in favor “aye.” All opposed “nay.” [Motion passed.]

[Motion passed to approve the changes to Title 85, Series 11, and motion passed for final approval of Title 85, Series 11.]



**7. General Public Comments**

Chairman Dean: Does anyone from the general public have a comment today?

[No comments from the public.]

**8. Old Business**

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under Old Business? Mr. Hartsog, Mr. Marshall, Mr. Dissen?

Mr. Dissen: No.

Mr. Hartsog: No.

Mr. Marshall: No, Mr. Chairman.

**9. New Business**

Chairman Dean: Does anybody from the Industrial Council have anything they would like to bring up under New Business? Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner Riley, do you have anything?

Commissioner Riley: No.

## **10. Next Meeting**

Chairman Dean: Moving on, the next meeting will be Thursday, April 26, 2012, at 1:00 p.m. Does that meet everybody's schedule?

## **11. Executive Session**

Chairman Dean: The next order of business is Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Dissen: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion made and seconded to go into Executive Session. Any question on the motion? All in favor signify by saying "aye." All opposed? The aye's have it. [Motion passed.] We are in Executive Session.

[The Executive Session began at 1:23 p.m. and ended at 1:36 p.m.]

Chairman Dean: We are now back to regular session. Is there a motion for approval of the self-insured companies recommended for renewal of their self-insured status on Exhibit A?

Mr. Marshall: So moved, Mr. Chairman.

Chairman Dean: Is there a second?

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded. Any questions on the motion? All in favor "aye." All opposed? The aye's have it.

## **12. Adjourn**

Chairman Dean: Is there a motion for adjournment?

Mr. Dissen made the motion to adjourn the meeting. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 1:38 p.m.